

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB JUNE 30, 00

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re McNeil (Ohio) Corporation

Serial No. 75/318,702

Paul I. J. Fleischut of Senniger, Powers, Leavitt & Roedel
for McNeil (Ohio) Corporation

Matthew J. Pappas, Trademark Examining Attorney, Law Office
104 (Sidney Moskowitz, Managing Attorney)

Before Seeherman, Wendel and Holtzman, Administrative
Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

McNeil (Ohio) Corporation has appealed from the final
refusal of the Trademark Examining Attorney to register
LEV-R-LOK for "a locking lever for securing the handle of a
hand-held grease gun in a position to prevent the
unintended discharge of grease."¹ Registration has been
refused pursuant to Section 2(e)(1) of the Trademark Act,

15 U.S.C. 1052(d), on the ground that the mark is merely descriptive of applicant's identified goods.

The appeal has been fully briefed; an oral hearing was not requested.

A mark is merely descriptive under Section 2(e)(1) of the Act if it immediately conveys knowledge of the ingredients, qualities, or characteristics of the goods with which it is used. **In re Gyulay**, 820 F.2d 1216, USPQ2d 1009 (Fed. Cir. 1987).

Applicant's mark is the phonetic equivalent of "lever lock." Its goods are described, in its amended identification, as a "locking lever" for a grease gun. Because applicant has based its application on an intention to use the mark, no specimens showing the mark are in the file, and we cannot determine from this record whether applicant intends to sell the device as a separate accessory for a grease gun, or if the mark is intended to be used to identify a feature of its grease gun. In either case, however, consumers would immediately understand, upon seeing the mark LEV-R-LOK in connection with the locking lever accessory or feature, that LEV-R-LOK identifies the locking lever or, as applicant described its goods in its

¹ Application Serial No. 75/318,702, filed July 2, 1997, based on an asserted bona fide intention to use the mark in commerce.

original identification, "a manually operated device for securing the handle of a hand-held grease gun in a position to prevent the unintended discharge of grease." No imagination or thought is necessary to reach such a conclusion.

Applicant's mark is merely a transposition of the term "locking lever" (a term it uses in its identification of goods as a generic term for its goods). This transposition, however, does not change "lever lock" or LEV-R-LOK into an inherently distinctive term. Because a grease gun handle is, in effect, a lever, consumers would immediately understand that LEV-R-LOK, used in connection with applicant's goods, describes a device which locks the grease gun handle, or lever, in order to prevent the unintended discharge of grease.

Pointing out that the term "lever lock" is used in the NEXIS database excerpts submitted by the Examining Attorney for a variety of items, applicant argues that "a consumer encountering appellant's LEV-R-LOK mark can only speculate as to what its product is." Brief, p. 3. However, it is well-established that the question of whether a particular term is merely descriptive is not decided in a vacuum, but in relation to the goods on which it is used. **In re Venture Lending Associates**, 226 USPQ 285 (TTAB 1985). As

we have already stated, consumers encountering the mark LEV-R-LOK used in connection with the identified goods--a manually operated locking lever for securing the handle of a hand-held grease gun--would immediately understand that the device is a locking lever for the grease gun, i.e., it serves to lock the lever/handle of the gun.

Applicant also argues that the presentation of its mark makes it distinctive. Although the words are misspelled, and that, combined with the hyphenation, gives the mark a certain symmetry, the mark is still immediately recognizable as the equivalent of "lever lock."

Applicant also points to various third-party Principal Register registrations for marks which include the elements "lever" or "lok." We do not know what went into the Examining Attorneys' decisions to allow the registrations of the third-party marks. We note that one of these registrations, for LEVERCLAMP (stylized), is on the Supplemental Register, an acknowledgment that the mark is not inherently distinctive, and that another registration, for LEVER WRENCH and design, carries a disclaimer of the words "lever" and "wrench." Of the remaining nine registrations, most are for marks which include an additional component to the "lever" or "lok" portion, e.g., LEVERON, LEV-R-MATIC, and all are for different goods than

those at issue herein. We will not engage in an extended discussion of the differences between those registrations and the application before us in this appeal. Suffice it to say that we are not persuaded by the existence of these registrations that applicant's mark LEV-R-LOK is inherently distinctive for applicant's identified locking lever.

Decision: The refusal of registration is affirmed.

E. J. Seeherman

H. R. Wendel

T. E. Holtzman
Administrative Trademark Judges
Trademark Trial and Appeal Board